

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Case No. 3:12-cv-02265-SI

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

**ORDER SETTING NOTICE AND
PROCEDURES FOR FAIRNESS
HEARING**

This matter comes before the Court upon the unopposed motion (Dkt. 51) of Plaintiff, United States, to set certain procedures for a fairness hearing regarding the Parties¹ jointly proposed Settlement Agreement (Dkt. 4-1). The purpose of the proposed Settlement Agreement is to resolve the United States' claims in this matter concerning certain policing practices, rather than engage in contested litigation.

Prior to making factual findings as to whether the proposed Settlement Agreement, as a whole, is fair, adequate, and reasonable, the Court will conduct a hearing to receive relevant, non-cumulative public comment from all interested stakeholders. To effectuate an efficient and

¹ For purposes of this Order, the Parties are defined as the United States, the City of Portland, the Portland Police Association, and Albina Ministerial Alliance Coalition for Justice and Police Reform.

fair process to receive public testimony, and to receive briefing from the Parties addressing public comments, and the fair, adequate, and reasonable standard of review, the Court hereby:

ORDERS the following process and schedule for the submission of written comments, and the taking of oral testimony at a fairness hearing. If a member of the public, or an organization, desires to provide oral testimony, such individual or organization is encouraged to provide the Court with a written submission summarizing the topics about which the individual or organization desires to provide testimony to the Court. If any individual or organization is unable personally to attend the scheduled hearing and would like to provide oral testimony, any such individual or organization may present oral testimony by video and submit such testimony on a DVD attached to his or her written submission. Written submissions are encouraged to be made on, or attached to, the Testimony Form appended to this Order as Exhibit A, and should be received by email to Mary_Austad@ord.uscourts.gov or the Clerk of Court no later than January 31, 2014 at 5:00 pm PST. While the Court will accept written and video submissions, as well as testimony at the hearing, until the conclusion of the hearing, the Court encourages all organizations or persons wishing to provide written testimony or speak at the Fairness Hearing to submit the Testimony Form in advance of the fairness hearing.

DIRECTS the Clerk to make available to the public free of charge this Order, the Complaint (Dkt. 1), proposed Settlement Agreement (Dkt. 4-1), Notice of Fairness Hearing (attached hereto as Exhibit B), and Testimony Form (attached hereto as Exhibit A). These documents shall be available at the Civil Intake Counter and on the District Court's public website at <http://ord.uscourts.gov/fh>. Individuals and organizations are encouraged to use the Testimony Form to submit written comments to the Court and sign up for oral public testimony.

DIRECTS the Clerk to provide counsel for all Parties with electronic copies of the written submissions by no later than February 4, 2014 at 5 p.m. PST.

FURTHER DIRECTS the Clerk to maintain the original written submissions, including the Testimony Forms and attachments, on file until the case is closed. The written submissions will not be made part of the record, unless and until the Court orders otherwise, but shall be considered by the Court and the Parties for the purposes of the hearing. The Court shall utilize the submissions of individuals and organizations to determine the scope of relevant, non-cumulative testimony that such individuals and organizations may offer the Court on record at the fairness hearing.

IT IS FURTHER ORDERED that the United States shall provide the Court a pre-hearing submission by February 11, 2014, to assist the Court in organizing any submitted written submissions and video-taped testimony by topic, and which will cross-reference where such topic is addressed in the proposed Settlement Agreement. The United States shall confer with all Parties prior to submitting such document with the Court.

The Court ORDERS a fairness hearing beginning on February 18, 2014 at 9 a.m. PST to receive any statements from the Parties, as well as relevant public testimony concerning the fairness, adequacy, and reasonableness of the proposed Settlement Agreement. Any oral testimony received on DVD, as noted above for persons or organizations unable to personally attend the hearing, may be played in open Court during the hearing.

The Parties are HEREBY DIRECTED to post the Notice of Fairness Hearing and Testimony Form on, and to link to the website <http://ord.uscourts.gov/fh> from, their public internet sites within three (3) business days of the issuance of this Order, and to provide copies to Street Roots, the Skanner, the Oregonian, Willamette Week, the Mercury, El Hispanic News, and

the Parties' customary media contacts. Additionally, the United States shall provide the Notice of Fairness Hearing and Testimony Form to the National Alliance on Mental Illness, Bud Clarke Commons, JOIN, and Project Respond. Furthermore, any individual or representative who previously provided comment to a party, and provided contact information to the party, should be provided a copy of this order via electronic mail by the party that was contacted, or by first class mail if no email contact was provided. Further distribution for posting to community centers within Portland city limits is encouraged.

The fairness hearing is ORDERED to be conducted in the following fashion. Upon arrival at the Courthouse, members of the public will sign-in at Courtroom 13B to notify the Courtroom Deputy Clerk that they are present and ready to testify. Those who previously submitted written comments and noted their request to provide oral testimony will be given priority. Those who did not provide advance notice of their intent to testify may testify, at the Court's discretion and time permitting. The Court will determine the order of the individuals providing testimony. Each member of the public will be provided five (5) minutes to provide oral testimony. Organizations providing testimony will be limited to presenting three (3) representatives of their organization. Each representative will have ten (10) minutes to testify. The Court may extend time for testimony for good cause. The Parties may raise proper objections to testimony. Only testimony and other evidence that is relevant, as determined by the Court, will be allowed at the hearing.

It is FURTHER ORDERED that upon the close of the fairness hearing, the Parties shall submit post-hearing briefings by March 11, 2014, concerning any argument they would like to submit in rebuttal to, or in clarification of, the public testimony provided to the Court.

Nothing in this Order waives the Parties' governmental, executive, settlement, or attorney-client privileges.

IT IS SO ORDERED.

DATED this 19th day of December 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge